Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Assessment and Collection of Regulatory Fees for Fiscal Year 2002	))))	MD Docket No. 02-64

AT&T COMMENTS ON 2002 REGULATORY FEES

Mark C. Rosenblum
Judy Sello

Room 1135L2
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8984

Its Attorneys

April 23, 2002

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Assessment and Collection of Regulatory Fees for Fiscal Year 2002	)	MD Docket No. 02-64

AT&T COMMENTS ON 2002 REGULATORY FEES

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these comments in response to the Commission's Notice of Proposed Rulemaking, FCC 02-92, released March 27, 2002 ("*2002 Regulatory Fees NPRM*") and published in 67 Fed. Reg. 17325 (April 10, 2002), in the Commission's 2002 regulatory fees proceeding.

INTRODUCTION AND SUMMARY

The Commission again proposes to establish its regulatory fees for interstate telecommunications service providers "based on their proportionate share of interstate and international end-user revenues for local and toll services" predicated "on the methodology used for calculating contributions to the Universal Service support mechanisms."[1] *2002 Regulatory Fees NPRM*, Attachment F, ¶ 33.

1 Citing *1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, FCC 99-175, rel. July 14, 1999, 64 FR 41320 (July 30, 1999) ("*Contributor Reporting Requirements Order*").

As shown in Part I, contrary to the Commission's assumption, the regulatory fees mechanism for interstate telecommunications service providers does *not* comport with the one used for universal service fund ("USF") contributions. Thus, at a minimum, to conform to the USF mechanism, the Commission should reduce the lag between accrual of revenues and the assessment of regulatory fees based on those revenues to 6 months for interstate telecommunications service providers.

Moreover, as shown in Part II, the Commission has proposed revising its USF assessment and recovery mechanism from a historical revenue-based assessment to a connection- and capacity-based mechanism based on current data to ensure the long-term viability of its universal service program and to comport with competitive neutrality.[2] When it implements this approach, it should simultaneously modify the collection of regulatory fees to conform to the USF model.

I. THE COMMISSION SHOULD, AT A MINIMUM, REDUCE THE REVENUE LAG FOR REGULATORY FEES TO 6 MONTHS.

Section 9(a) of the Communications Act, 47 U.S.C. § 159(a), directs the Commission to assess and collect regulatory fees to recover its costs of regulation. In 2000, the Commission modified the mechanism for assessing regulatory fees from one based gross telecommunications revenues net of payments to underlying carriers for telecommunications facilities and services, to one based on end-user revenues to conform to the mechanism used for USF. It did so because, in 1999, as part of its paperwork streamlining efforts, the Commission

---

2 *Federal-State Joint Board on Universal Service, et al.*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, FCC 02-43, rel. Feb. 26, 2002 ("*USF Contribution FNPRM*").

had amended its rules and required contributors to file only a single form FCC Form 499-A, Telecommunications Reporting Worksheet, for USF, TRS, NANP and LNP fees and eliminated FCC Form 431, TRS Fund Worksheet, on which the regulatory assessment had previously been based.[3] Despite its stated desire to align the assessment of regulatory fees with that used for the USF, the two mechanisms have significant differences that drive up the regulatory fee payments of interexchange carriers ("IXCs") with declining assessable revenues.

To conform the regulatory fee assessment mechanism to that used for USF, the Commission should, at a minimum, reduce the lag between accrual of revenues and assessment of regulatory fees based on those revenues to 6 months, consistent with the existing revenue lag for USF. The Commission's USF recovery mechanism was originally predicated on "prior year" revenues and there was a 12-month lag between assessment and collection.[4] As AT&T has repeatedly shown, assessment of carriers' USF contribution based on historical prior-year revenues seriously disadvantages certain carriers, violates competitive neutrality and discourages local competition.[5]

---

3 *Assessment and Collection of Regulatory Fees for Fiscal Year 2000,* MD Docket No. 00-58, Report and Order, FCC 00-240, rel. July 10, 2000, ¶ 31 ("*Fiscal Year 2000 Regulatory Fees Order*").

4 *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.,* CC Docket No. 97-21, *Federal-State Joint Board On Universal Service*, CC Docket No. 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd. 18400, ¶¶ 43, 80, Appendix C (1997).

5 *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, AT&T Petition for Reconsideration, filed Mar. 1, 2000; AT&T Reply to Oppositions to and Comments on its Petition for Reconsideration, filed May 1, 2000; AT&T Comments on USF Lag FNPRM, filed Nov. 30, 2000; AT&T Reply Comments on USF Lag FNPRM, filed Dec. 14, 2000; Comments of AT&T Corp., filed June 25, 2001, at 9-11; Reply Comments of AT&T Corp.,

(footnote continued on following page)

In particular, the USF lag (like the regulatory fee lag here) creates an artificial competitive advantage for telecommunications carriers with increasing interstate or international revenues because those carriers – unlike established long distance carriers – are not obligated to contribute to the universal service fund for 6 months – when they will be able to spread the recovery of those contributions over a larger revenue base. To the extent the RBOCs increase market share following in-region long distance entry, the revenue base for recovery of their USF obligations will always be greater than the revenue base on which their USF obligations were assessed. In fact, the RBOCs will be able to use this discrepancy to finance their market share growth. By contrast, carriers with declining interstate revenue accrue large assessments, which then must be spread over a smaller revenue base.

In recognition of the serious competitive distortions engendered by 12-month lag, the Commission modified the methodology used to assess USF contributions to reduce the interval between the accrual of revenues and the assessment of USF contributions based on those revenues to 6 months.[6] As the Commission observed, the "shortened interval will allow contributors to better reflect market trends influencing carriers' revenues, such as the entry of new providers into the interstate marketplace. As a result, the revised methodology will further the Commission's goal of maintaining competitive neutrality."[7]

(footnote continued from previous page)

filed July 9, 2001, at 8-10; AT&T Comments on USF Contribution FNPRM, filed Apr. 22, 2002, at 11-13.

6 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, FCC 01-85, released Mar. 14, 2001 ("*6-Month Lag Order*").

7 *6-Month Lag Order,* ¶ 9.

(footnote continued on following page)

Although in 2001 the Commission reduced the lag for USF purposes, it never modified the methodology for assessing regulatory fees. As a result, regulatory fees paid by interstate telecommunications service providers continue to be based on their prior year revenues. In fact, because 2002 regulatory fees will not be paid until September 2002 and the assessment base is carriers' calendar year 2001 revenues, a 15-month lag exists for regulatory fees.

Given the Commission's intent to conform the assessment mechanism of various programs for interstate telecommunications service providers to that used for USF,[8] the Commission should, at a minimum, reduce the lag to 6 months by allowing carriers to base their 2002 regulatory fees on their August 1, 2002 FCC Form 499-Q[9] which reflects data from the second quarter 2002. The Commission could use the data from the August FCC Form 499-Q (and annualize it) to set the assessment factor for interstate telecommunications service providers. This will at least put regulatory fees on the same footing as universal service funding although, as the Commission is aware, even the 6-month lag imposes significant competitive distortions and must be eliminated.

II. THE COMMISSION SHOULD MAKE FURTHER MODIFICATIONS TO THE REGULATORY FEE ASSESSMENT MECHANISM ONCE IT HAS REVISED THE USF METHODOLOGY.

(footnote continued from previous page)

8 *See Contributor Reporting Requirements,* ¶ 1; *Fiscal Year 2000 Regulatory Fees Order,* ¶¶ 28-31; *2002 Regulatory Fees NPRM,* Attachment F, ¶ 33.

9 FCC Form 499-Q, Line 116(b) & (c) USF Contribution Base Revenues, Interstate and International.

In its pending rulemaking on the assessment and recovery of USF contributions, the Commission seeks comment on "whether to assess contributions based on the number and capacity of connections provided to a public network" so as to "ensure the long-term stability, fairness, and efficiency of the universal service contribution system in a dynamic telecommunications marketplace."[10]

As AT&T and the Coalition[11] showed in their April 22, 2002 comments in response to the *USF Contribution FNPRM*, changes in telecommunications markets have rendered the existing revenue-based universal service assessment and contribution mechanism obsolete and competitively-biased. The dramatic decrease in wireline interstate revenues, coupled with increasing universal service funding requirements, will force the universal service system into a "death spiral," with ever-increasing contribution factors that consumers and providers will seek to avoid through new offerings. The discriminatory impact of the 6-month lag will continue to strain the system. While a revenue-based approach may have been reasonable in 1997 when it was first adopted, the telecommunications market has changed dramatically since then, and the emergence of new technologies and bundled service offerings are rapidly undermining the Commission's existing assessment method. Together, these factors have contributed to the volatility and decline of interstate and international telecommunications revenues, thereby making a revenue-based mechanism unsustainable in the long run. Adoption

---

10 *USF Contribution FNPRM,* ¶ 2.

11 The members of the Coalition for Sustainable Universal Service are Ad Hoc Telecommunications Users Committee, AT&T, e-commerce Telecommunications Users Group, Level 3 Communications, and WorldCom ("Coalition").

of the Coalition proposal for a connection- and capacity-based approach would create a universal service system that is equitable, sustainable and nondiscriminatory.[12]

The declining interstate and international telecommunications revenue base has similar impacts in the regulatory fee context, placing an inequitable and ongoing burden on IXCs. In fact, there has been a $1 billion *decrease* in interstate and international end-user revenues that form the assessment base for USF and regulatory fees.[13] As a result, the assessment factor for regulatory fees applicable to interstate telecommunications service providers increased for fiscal year 2002 by nearly 16% even though the Commission's revenue requirement increased by 9.3%. Likewise, in fiscal year 2001, the assessment factor increased by nearly 13% although the Commission's revenue requirement increased by 7.8%.

Accordingly, as soon as the Commission reforms its USF assessment and recovery mechanism to one based on current data on the number and capacity of end-user connections that a carrier provides, it should similarly conform the assessment and recovery of regulatory fees for interstate telecommunications service providers to that approach. Such a mechanism would be competitively neutral and would avoid several problems, including, most fundamentally, the discriminatory impact of the existing mechanism given carrier revenue

---

[12] Although wireless carriers contribute to the USF based on an outmoded assumption that only 15% of their revenues are interstate, for regulatory fee purposes most wireless carriers are assessed on a mobile telephone number basis. *See 2002 Regulatory Fees NPRM*, Attachment F, ¶ 14. Thus, wireless carriers are already assessed based on end-user connections for regulatory fees.

[13] The interstate and international end-user telecommunications revenues that are the basis for assessment of USF and regulatory fees decreased by approximately $1 billion between the computation of the contribution factors for the first and second quarters of 2002. *Compare Proposed First Quarter 2002 Universal Service Contribution Factor*, DA 01-2823, rel. Dec.

(footnote continued on following page)

fluctuations and the death spiral as ever-increasing regulatory fees burden a declining interstate and international telecommunications revenue base.[14]

(footnote continued from previous page)

7, 2001, *with Proposed Second Quarter 2002 Universal Service Contribution Factor*, DA 02-562, rel. Mar. 8, 2002.

[14] AT&T has requested a waiver to base its USF assessments on projected revenues if for any reason the Commission were to retain a historical revenue-based USF assessment mechanism beyond July 1, 2002. *See* Letter from Robert W. Quinn, Jr., AT&T, to Ms. Magalie Roman Salas, Secretary, FCC, dated Dec. 13, 2001, CC Docket No. 96-45; Public Notice, DA 02-376, rel. Feb. 26, 2002, establishing pleading cycle on AT&T's USF waiver request; and AT&T Projected Revenue Proposal Reply Comments, filed Apr. 22, 2002. If granted, such a waiver would also apply to AT&T's regulatory fees which are computed from the Form 499 revenue base. By permitting AT&T to base its USF and regulatory fee assessments on projected revenues, such a waiver would enable AT&T to avoid imposing on millions of consumers the distortions caused by the revenue lag, pending adoption of the Coalition proposal.

CONCLUSION

For these reasons, the Commission should modify its mechanism for assessment and collection of regulatory fees for interstate telecommunications service providers in the manner described above.

Respectfully submitted,

AT&T CORP.

By /s/ Judy Sello

Mark C. Rosenblum
Judy Sello

Room 1135L2
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8984

Its Attorneys

April 23, 2002